IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3165 OF 2005

Phirose T. Motiwala ... Petitioner

V/s.

Behram P. Cooper ... Respondent

Mr.A.R. Pande for Petitioner
Mrs.K.G. Parmar for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 11, 2005**

P.C.:

. This Petition challenges the order passed by the appellate Court holding that the Petitioner has not made out a case that the decree passed against him on 22.7.1993 was a nullity. When the ex-parte decree was sought to be executed, the Petitioner contended that the ex-parte decree was not executable because the provisions of section 12 of the Bombay Rent Act had not been complied. The trial Court held that it does not have jurisdiction to ascertain whether a decree passed by the competent Court is a nullity. An appeal was preferred from this order. The appeal Court has rightly held that the trial Court had the jurisdiction to consider whether the decree was a nullity when put into execution. However, the appeal Court has also observed that such a contention was never raised by the

Petitioner at any stage.

2. It is contended on behalf of the Petitioner that the decree passed is without jurisdiction since the trial Court has not considered whether the Petitioner was in fact in arrears of rent as required under law. It is submitted that the Court gets jurisdiction only when the provisions of section 12(2) Bombay Rent Act are satisfied.

3. All these contentions cannot be raised at this stage. These issues were not pleaded in the application filed for setting aside the decree. Nor was this contention raised in the appeal filed from the order refusing to set aside the decree or in the Writ Petition No.3168 of 2000. Therefore, such a plea cannot be raised at the stage of execution. Hence, Petition dismissed.

4. Mr.Pande requests for staying the operation of this order for a period of eight weeks. Stay granted accordingly on condition that the petitioner and all adult members of his family shall file an undertaking in the usual terms in this Court within a week from today.